

No. R-1

\$31,500,000.00

UNITED STATES OF AMERICA
STATE OF FLORIDA
CITY OF DELRAY BEACH
CAPITAL IMPROVEMENT REVENUE BOND,
SERIES 2017

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>
_____ %	October 1, 2026	June __, 2017

Registered Owner: BANC OF AMERICA PREFERRED FUNDING CORPORATION

Principal Amount: THIRTY ONE MILLION FIVE HUNDRED THOUSAND
AND 00/100 DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that the City of Delray Beach, Florida, a municipal corporation of the State of Florida (the "City"), for value received, hereby promises to pay, from the Pledged Revenues hereinafter mentioned, to the Registered Owner or registered assigns, the Principal Amount stated hereon with interest thereon at the Interest Rate set forth above (subject to adjustment as herein provided), principal and interest being payable on the dates set forth below, until the City's obligation with respect to the payment of such Principal Amount shall be discharged. Principal of and interest on this Bond is payable by wire transfer to the Holder to the domestic bank account number on file with the Finance Department of the City (in its capacity as Paying Agent) as of the Record Date, the name and address (such address being the "Payment Office") of such Holder which shall appear on the registration books maintained by the City (in its capacity as Registrar) at the close of business on the day preceding each interest payment date, whether or not such day is a Business Day (the "Record Date"). Alternatively, if agreed upon in writing by the City and the Registered Owner, while Banc of America Preferred Funding Corporation is the Registered Owner, payment of principal and interest shall be made by direct debit by the Registered Owner of an account of the City designated by the City. Such interest shall be payable from the most recent interest payment date next preceding the date hereof to which interest has been paid, unless the date hereof is an April 1 or October 1 to which interest has been paid, in which case from the date hereof, or unless the date hereof is prior to October 1, 2017, in which case from the date hereof.

Accrued interest on this Bond will be payable on April 1 and October 1 of each year, beginning October 1, 2017. The principal of this Bond will be payable in accordance with the following schedule:

<u>Date</u>	<u>Principal Amount Due</u>
October 1, 2017	\$
October 1, 2018	
October 1, 2019	
October 1, 2020	
October 1, 2021	
October 1, 2022	
October 1, 2023	
October 1, 2024	
October 1, 2025	
October 1, 2026	*

* Or if greater, all outstanding and unpaid principal.

Any payment due on a day which is not a Business Day may be made on the next succeeding Business Day but interest shall continue to accrue and shall be payable on such next succeeding Business Day.

The principal of and interest on this Bond is payable in any coin or currency of the United States of America, which, on the date of payment thereof, shall be legal tender for the payment of public and private debts. All payments hereon shall be applied first to interest, then to amounts owed to the Registered Holder other than principal, and last to principal.

Default and Late Payment Rates

During the continuance of an Event of Default this Bond shall bear interest at the Default Rate (as defined in the Resolution) and, for any payment that is more than fifteen (15) days late, the Registered Owner may impose a late fee equal to four percent (4%) of the late payment.

Increase in Interest Rate upon a Determination of Taxability

The following definitions shall apply to this Bond:

- (1) “Code” means the Internal Revenue Code of 1986, as amended.
- (2) “Determination of Taxability” shall mean the circumstance that interest paid or payable on this Bond becomes includable for federal income tax purposes in the gross income of the Registered Holder as a consequence of any act or omission of the City. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the City or the Registered Owner of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on this Bond is

includable in the gross income of the Registered Owner or (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on this Bond is includable in the gross income of the Registered Owner. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on this Bond is deemed includable in the gross income of the Registered Owner. A Determination of Taxability shall not occur solely as a result of such interest being taken into account in determining adjusted current earnings for the purpose of the alternative minimum tax imposed on corporations.

(3) “Maximum Corporate Tax Rate” shall mean the highest marginal rate of United States federal income tax applicable to the taxable income of corporations, without regard to any increase in tax designed to normalize the rate for all income at the highest marginal tax rate, which rate on the date hereof is 35%.

Upon the occurrence of a Determination of Taxability, the Interest Rate shall be adjusted to a rate per annum equal to the rate otherwise borne hereby divided by one minus the Maximum Corporate Tax Rate in effect as of the date of the Determination of Taxability (the “Adjusted Interest Rate”), as of and from the date such determination would be applicable with respect to this Bond (the “Accrual Date”) and (i) the City shall, from the sources hereinafter provided and not otherwise, immediately pay on demand to the Registered Owner an amount equal to the sum of (1) the difference between (A) the total interest that would have accrued on this Bond at the Adjusted Interest Rate from the Accrual Date to the date of such demand for payment, and (B) the actual interest paid by the City on this Bond from the Accrual Date to the date of such demand for payment, and (2) any loss, cost, charge or expense suffered by such Registered Owner arising out of the Determination of Taxability, including without limitation amounts of interest and penalties required to be paid as a result of any additional state and federal income taxes by such Registered Owner as a result of such Determination of Taxability; and (ii) from and after the date of such demand for payment, this Bond shall continue to bear interest at the Adjusted Interest Rate for the period such determination continues to be applicable with respect to this Bond. The adjustment provided for in this paragraph shall survive the payment of this Bond until the expiration of the statute of limitations under which the interest on this Bond could be required to be included in the gross income of the registered owner thereof for federal income taxes purposes.

Provided, however, that notwithstanding any of the adjustments in the Interest Rate described above, the Interest Rate shall never exceed the maximum rate allowed by law.

Prepayment

This Bond may be prepaid by the City at any time, in whole or in part, upon providing three (3) Business Days’ notice to the Registered Owner of the City’s intent to prepay. Partial prepayments shall be applied against principal in inverse order of maturity, unless otherwise agreed upon in writing by the City and the Registered Owner. The amount to be prepaid shall be equal to the principal amount to be prepaid plus accrued interest to the date of prepayment, plus the “prepayment fee” described below.

The prepayment fee will be equal to the present value (discounted by the Reinvestment Rate) of the difference, if positive, between:

- (a) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to ____% [swap rate plus 25 bps], as if the prepayment had not been made, less
- (b) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to the Reinvestment Rate, as if the prepayment had not been made.

The following definitions will apply to the calculation of the prepayment fee:

- (i) “Reinvestment Rate” means with respect to each prepaid installment of principal, the Swap Rate on the date the prepayment fee is calculated by the Registered Owner for a term corresponding to the period of time remaining until such principal installment was scheduled to be paid, interpolated on a linear basis, if necessary, and
- (ii) “Swap Rate” means, as of any date, the offered U.S. Dollar interest rate swap rate that a fixed rate receiver would receive in return for paying a floating rate equal to the three month Libor determined by the Registered Owner on such date by reference to the Bloomberg service or such other similar data source then used by the Registered Owner for determining such rate.

This Bond is the entire authorized issue of the City’s Capital Improvement Revenue Bonds, Series 2017 (herein called the “Bonds”), in the aggregate principal amount of \$31,500,000, issued for the purpose of financing the cost of the Series 2017 Project (as defined in the Resolution hereinafter referred to) under the authority of and in full compliance with the Constitution, the City Charter, as amended and supplemented, and Statutes of the State of Florida, including particularly Chapter 166, Florida Statutes, as amended and supplemented and other applicable provisions of law, and Resolution R-76-99, duly adopted by the City Commission of the City (the “City Commission”) on December 14, 1999, as amended and supplemented by Resolution R - ____ - 17 duly adopted by the City Commission on June 20, 2017 (herein collectively referred to as the “Resolution”), and is subject to all the terms and conditions of the Resolution. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

This Bond is payable from and secured by a lien upon and pledge of the Pledged Revenues, all in the manner provided in the Resolution.

“Pledged Revenues” means: (a) the Non-Ad Valorem Revenues deposited in the Debt Service Fund created and established under the Resolution, (b) investment income received from the investment of moneys in the Debt Service Fund and accounts established thereunder; and (c) any other moneys deposited in the Debt Service Fund or received by the Paying Agent in connection with repayment of the Bonds.

“Non-Ad Valorem Revenues” means legally available revenues of the City derived from any source whatever other than ad valorem taxation on real and personal property, which are legally available for payment by the City.

“Business Day” means any day other than a Saturday or Sunday or day on which the Payment Office of the Registered Owner is lawfully closed.

Until all of the Bonds are paid or deemed paid pursuant to the provisions of the Resolution, the City has covenanted to appropriate in its annual budget, by amendment if required, in each Fiscal Year, Non-Ad Valorem Revenues sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds as the same become and payable. Notwithstanding the foregoing covenant of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Revenues.

To the extent that the City is in compliance with the covenants contained in the Resolution, and has budgeted and appropriated in each Fiscal Year, Non-Ad Valorem Revenues sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds as the same become due and payable, the Resolution and the obligations of the City contained therein shall not be a limitation on the ability of the City pledge or covenant to pledge its Non-Ad Valorem Revenues for other legally permissible purposes.

THE FULL FAITH AND CREDIT OF THE CITY IS NOT PLEDGED FOR PAYMENT OF THIS BOND, AND THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE CITY WITHIN THE MEANING OF THE CONSTITUTIONAL, STATUTORY OR OTHER PROVISION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS BOND THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND OR THE MAKING OF RESERVE, IF ANY, AND SINKING FUND PAYMENTS PROVIDED FOR IN THE RESOLUTION.

IT IS FURTHER AGREED BETWEEN THE CITY AND THE HOLDER OF THIS BOND THAT THIS BOND AND THE OBLIGATION EVIDENCED THEREBY SHALL NOT CONSTITUTE A LIEN ON THE SERIES 2017 PROJECT OR ANY OTHER PROPERTY OF OR IN THE CITY, BUT SHALL CONSTITUTE A LIEN ONLY ON THE PLEDGED REVENUES PLEDGED THERETO, ALL IN THE MANNER PROVIDED IN THE RESOLUTION.

The original Registered Owner, and each successive Registered Owner of this Bond shall be conclusively deemed to have agreed and consented to the following terms and conditions:

(1) The Registrar shall maintain the books of the City for the registration of Bonds and for the registration of transfer of Bonds as provided in the Resolution. The Bonds shall be transferable by the Registered Owner thereof in person or by his attorney duly authorized in writing only upon the books of the City and only upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his

duly authorized attorney. Upon the transfer of this Bond, the City shall issue in the name of the transferee a new Bond.

(2) The City, the Paying Agent and the Registrar shall deem and treat the person in whose name this Bond shall be registered upon the books kept by the Registrar as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond as the same becomes due, and for all other purposes. All such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the City, the Paying Agent nor the Registrar shall be affected by any notice to the contrary.

(3) In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the City shall execute and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Resolution. There shall be no charge for any such exchange or transfer of Bonds, but the City or the Registrar may require payment of a sum sufficient to pay any tax, fee or other governmental charge (except a charge imposed by the City) required to be paid with respect to such exchange or transfer.

This Bond shall not be valid or obligatory for any purpose until the certificate of authentication set forth hereon shall have been duly executed by the City.

This Bond is and shall have all the qualities and incidents of a negotiable instrument under the laws of the State of Florida.

No covenant or agreement contained in this Bond or the Resolution shall be deemed to be a covenant or agreement of any officer, member or employee of the City in his or her individual capacity, and no such officer, member or employee shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance of this Bond.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed, precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the laws of the City and the laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Bond is in full compliance with all constitutional or statutory limitations or provisions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Delray Beach, Florida, has caused this Bond to be signed by its Mayor, either manually or with his facsimile signature, and the seal of the City to be affixed hereto or imprinted, and attested by the Clerk, either manually or with her facsimile signature, all as of the Dated Date.

CITY OF DELRAY BEACH, FLORIDA

By: _____
Mayor

[SEAL]

ATTEST

Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, 2017

This Bond is the Bond delivered pursuant to the within mentioned Resolution.

FINANCE DEPARTMENT OF CITY OF
DELRAY BEACH, FLORIDA, as Registrar

By: _____
Finance Director

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned _____ (the
"Transferor"), hereby sells, assigns and transfers unto
_____ (the "Transferee")

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF TRANSFeree

the within Bond and all rights thereunder, and hereby irrevocably constitutes and
appoints _____ as attorney to
register the transfer of the within Bond on the books kept for registration and registration of
transfer thereof, with full power of substitution in the premises.

Date: _____

Signature Guaranteed:

NOTICE: Signature(s) must be
guaranteed by a member firm of the
New York Stock Exchange or a
commercial bank or trust company.

NOTICE: No transfer will be
registered and no new Bond will be
issued in the name of the Transferee,
unless the signature(s) to this
assignment correspond(s) with the
name as it appears upon the face of
the within Bond in every particular,
without alteration or enlargement
or any change whatever and the
Social Security or Federal Employer
Identification Number of the
Transferee is supplied.